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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/880,322

06/13/2001

Walter H. Runkis

5476

20529

7590

03/08/2010

THE NATH LAW GROUP

112 South West Street

Alexandria, VA 22314

EXAMINER

FISHER, ABIGAIL L

ART UNIT

PAPER NUMBER

1616

MAIL DATE

DELIVERY MODE

03/08/2010

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Advisory Action</b> <b>Before the Filing of an Appeal Brief</b>	<b>Application No.</b> 09/880,322	<b>Applicant(s)</b> RUNKIS, WALTER H.	
	<b>Examiner</b> ABIGAIL FISHER	<b>Art Unit</b> 1616	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 26 February 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
 b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

#### AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
 (b) ☐ They raise the issue of new matter (see NOTE below);  
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
 5. ☒ Applicant's reply has overcome the following rejection(s): See Continuation Sheet.  
 6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
 The status of the claim(s) is (or will be) as follows:  
 Claim(s) allowed: \_\_\_\_\_.  
 Claim(s) objected to: \_\_\_\_\_.  
 Claim(s) rejected: 80-81, 86-87, 89-90 and 98-103.  
 Claim(s) withdrawn from consideration: \_\_\_\_\_.

#### AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

#### REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
 12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_  
 13. ☐ Other: \_\_\_\_\_.

/Mina Haghighatian/  
 Primary Examiner, Art Unit 1616

Continuation of 5. Applicant's reply has overcome the following rejection(s): The rejection of claims 91 and 96 under 35 USC 103(a) as being unpatentable over Woodhouse in view of Kirk-Othmer and in further view of Rodder is withdrawn in light of the cancellation of claims 91 and 96. The rejection of claims 94-95 under 35 USC 103(a) as being unpatentable over Woodhouse in view of Kirk-Othmer and in further view of Oeriu et al. is withdrawn in light of the cancellation of claims 94-95.

Continuation of 11. does NOT place the application in condition for allowance because: The rejection of claims 80-81, 86-87, 89-90 and 98-103 are maintained for the reasons set forth in the final Office action. Applicants argue that the pH range of the compositions of Woodhouse are alkaline (pH of 6-8) whereas the instant claims recite an acidic stock solution. However, applicants have not presented evidence that the claimed composition of Woodhouse is alkaline. No evidence has been presented to support this allegation. Applicants argue that superphosphate is not phosphoric acid as indicated by the examiner. Applicants have shown the product of superphosphate on page 7 of the response. This product comprises at least calcium phosphate (which reads on instant claims). Furthermore, an acidic solution would result in protonation of the acid. Applicants argue that the final fertilizer composition in Woodhouse does not and cannot contain any salts of sulfamic acid. The examiner disagrees as claimed in Woodhouse the method of producing the fertilizer comprises adding to an acidic fertilizer materials a material selected from the group consisting of sulfamic acid and salts of sulfamic acid. Therefore, one of ordinary skill in the art can envision add either sulfamic acid or a salt of sulfamic acid. The instant claims require a bivalent metallic sulfamate and a phosphate salt or nitrate salt or both or phosphoric acid and/or nitric acid. Woodhouse teaches an acidic fertilizer teaches utilizing salts of sulfamate and known fertilizer materials such as superphosphate and potash salts. Therefore, the compositions appear to be the same. Applicants have previously elected iron sulfamate as the specific bivalent salt. However, if one looks to other species taught in instant claim 87 other salts include magnesium, calcium, potassium and ammonium salts. These are all the same salts taught by Woodhouse. Applicants appear to be arguing that different reactions take place once the components of Woodhouse are mixed as opposed to the mixing that takes place in the instant composition. However, the claims do not reflect this. As indicated above, the claims require two ingredients. Woodhouse teaches mixing these two components to form a fertilizer composition. Therefore, the composition of Woodhouse is the same as instantly claimed. For at least these reasons, the rejections are maintained.